

STATE OF MICHIGAN
COURT OF APPEALS

BEST INVESTMENT SERVICES, INC.,

Plaintiff-Appellant,

v

ROBERT E. GESELL,

Defendant-Appellee,

and

DEAN & FULKERSON, P.C., and HAROLD
MEIER,

Defendants.

UNPUBLISHED

January 24, 2006

No. 263976

Oakland Circuit Court

LC No. 2004-060259-CK

Before: Sawyer, P.J., and Wilder and H. Hood*, JJ.

PER CURIAM.

Plaintiff appeals from a grant of summary disposition on plaintiff's claim sounding in fraud. We reverse and remand.

This action arises out of a loan plaintiff made to Precision Technology, Inc. Defendant Gesell is a minority shareholder in Precision, defendant Meier is the majority shareholder, and defendant Dean & Fulkerson is a law firm representing Precision in the loan transaction. The complaint alleges that both Gesell and Meier were officers and employees of Precision. The complaint also alleges that Gesell was employed as an attorney by Dean & Fulkerson as well. The law firm was dismissed from this action and plaintiff took a default judgment against Meier. Precision Technology was never a party to this action. Accordingly, only the claims against Gesell are at issue in this appeal.

The loan, in the amount of \$150,000, was secured by two heavy-duty grinding machines. Plaintiff's complaint alleges that Gesell, in the scope of his employment both by Precision and Dean & Fulkerson, was involved in the negotiation of the loan and misrepresented the value of the grinders being offered as security for the loan. Specifically, plaintiff alleges that it was represented that the grinders had a fair market value of \$450,000 each, when in fact both grinders

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

had been purchased the preceding year for only \$65,000. The complaint further alleges that after Precision defaulted on the loan and plaintiff took possession of the grinder, the grinders were sold at auction for only \$10,000.

Plaintiff thereafter instituted the instant action, alleging both fraud and innocent misrepresentation. The trial court granted defendant Gesell's motion for summary disposition, concluding that, because Gesell was acting as an agent for Precision, he cannot be individually liable.

Plaintiff first argues that the trial court erred in dismissing the fraud claim against Gesell on the basis that Gesell had no individual liability because he was acting as an agent of Precision. We agree. We review a grant of summary disposition de novo. *Groncki v Detroit Edison Co*, 453 Mich 644, 649; 557 NW2d 289 (1996).

An agent is responsible for the torts he commits, even if he does so while acting on behalf of a principal and even if the principal is also liable for the tort. *Hartman & Eichhorn Bldg Co, Inc, v Dailey*, 266 Mich App 545, 549; 701 NW2d 749 (2005). Accordingly, defendant was not entitled to summary disposition on the basis that he was acting as an agent of the corporation. He remains personally liable for those torts that he personally committed, even if he did so on behalf of his employer while acting in the course of his employment.

The cases cited by the trial court in its decision are not applicable to the case at bar. In *Huizenga v Withey Sheppard Assoc*, 15 Mich App 628, 633; 167 NW2d 120 (1969), the Court did note that an agent for a disclosed principal is not liable in a transaction with a third party. But the trial court's opinion overlooks the introductory phrase to that observation: "in the absence of an actionable fraud" *Id.* Rather than supporting the trial court's conclusion, *Huizenga* in fact supports plaintiff's position. Similarly, *Foodland Distributors v Al-Naimi*, 220 Mich App 453; 559 NW2d 379 (1996), is not on point because it dealt with piercing the corporate veil, not with holding an agent liable for his own fraud committed on behalf of the corporation.

Plaintiff next argues that the doctrines of economic loss and merger do not bar recovery. While the trial court did note that defendant raised this argument, the trial court does not base its grant of summary disposition on those arguments.¹ Indeed, the trial court premised its conclusion on the assumption that neither of those doctrines barred plaintiff's claim. Accordingly, like the trial court, we decline to address the applicability of those arguments to this case.

¹ Though we do note that the trial court appears to have addressed the economic loss doctrine issue to the extent that it seems to reject plaintiff's argument that the doctrine does not apply because there was fraud in the inducement and the trial court concludes that plaintiff failed to state a claim for fraud in the inducement. Nonetheless, the trial court's opinion never concludes that defendant was entitled to a grant of summary disposition on the basis of the economic loss doctrine.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff may tax costs.

/s/ David H. Sawyer

/s/ Kurtis T. Wilder

/s/ Harold Hood